IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 123/2007

Marcos Cordeiro alias Mark Cordeiro, r/o. Datta Apartments, 2nd Floor, Bhatlem, Panaji, Goa. ..... Appellant.

V/s.

M/s. Confeitaria Italiana, Proprietary Concern owned by Mr. Bento M. Fernandes through its Manager Mr. Altinho de Souza, r/o. Rua Jose Falcao, Panaji, Goa. ..... Respondent.

Mr. V. A. Lawande, Advocate for the appellant.

Mr. Joseph Vaz, Advocate for the respondent.

CORAM : R.S. MOHITE, J.

DATE : SEPTEMBER 13, 2007.

ORAL JUDGMENT :

Heard both sides. Admit. By consent taken up for final hearing.

2. This appeal is against a Judgment and Decree dated 28th November, 2006 passed by the Civil Judge, Sr. Division, "B" Court, Panaji decreeing a money suit. It is seen from the Roznama that the evidence of the plaintiff was going on and in the course of the trial, the defendant remained

absent on 15.6.06. On that day, the trial Court passed an order, adjourning the matter to 13.7.2006. On this date also the defendant was absent. It appears that on the same day, an Advocate by name Shri Sagar Kalangutkar appeared on behalf of the defendant and made an application, styled as an application for re-opening/allowing the defendant to cross examine the plaintiff. On reading of this application, I find that the observation of the trial Court to the effect that the application is negligently drafted, is correct. In so far as in the body of the application as well as in the prayer, it is mentioned that the evidence of defendant may be reopened, when, in fact, the plaintiff was still in the witness box. However, upon reading the title of the application, it does appear that the intention was to seek permission for examining the plaintiff. It is also correct that the concerned Advocate who made the application had not filed his Wakalatnama. However, I am informed that he was belonging to the Chamber of Advocate S. Samant whose name admittedly appears in the Roznama. Advocate for the respondent i.e. original plaintiff states that apart from the evidence of the plaintiff, other witnesses were yet to be examined by the plaintiff. Thus, taking an overall view of the matter, in the interest of justice, I am inclined to allow this appeal to enable the matter to be decided on merits, subject to imposition of heavy costs.

3. In the circumstances, the appeal is allowed subject to payment of costs of Rs.10,000/- which shall be paid directly to the respondent within a period of two weeks from today. The impugned Judgment and Order passed by the trial Court on 28.11.2006 as well as the order passed on 17.8.06 below Exhibit – 42 are, hereby, set aside. The trial Court is directed to redecide the matter on merits, after allowing the plaintiff to complete its evidence and thereafter allowing the defendant to lead his evidence. The trial Court to take up the matter on priority basis as it is an old matter of the year 1996 and dispose it off on merits within a period of six months from today. The matter may be fixed on the Board of the trial Court 'for appearance' on 27th September, 2007. Appeal stands disposed off with the aforesaid directions. Certified copy expedited.

R.S. MOHITE, J.

ssm